92-1363

Supreme Court, U.S.
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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1992
NO. ____

COMMONWEALTH OF PENNSYLVANIA,
Petitioner

VS.

GEORGE CLARK,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF PENNSYLVANIA

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QUESTION PRESENTED FOR REVIEW

Do the Fourth and Fourteenth Amendments to the United States Constitution require the suppression of evidence where the affiant police officer on a search warrant reasonably believes information from a reliable informant to be true, but the information, subsequent to the approval and execution of the warrant, proves to be incorrect in part.

TABLE OF CONTENTS

	PAGE
Opinions Below	2
Statement of Jurisdiction	3
Constitutional Provisions Involved	4
Statement of the Case	5
Reasons for Granting the Writ	8
Conclusion	11

APPENDICES

Appendix A:	Opinion and Judgment of Pennsylvania Superior Court - 1/6/92	1a
Appendix B:	Opinion of Court of Common Pleas of Delaware County, Pennsylvania 6/4/91	17a
Appendix C:	Order of Pennsylvania Superior Court - 3/12/92	23a
Appendix D:	Order of Pennsylvania Supreme Court - 11/18/92	24a

TABLE OF AUTHORITIES

	PAGE
Federal Cases	
Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)	8
Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978)	9,10
Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961)	9
28 U.S.C. §1257(3)	3
35 Pa.C.S.A. §780-113	5

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Petitioner, the Commonwealth of Pennsylvania, respectfully requests that a Writ of Certiorari issue to review the Judgment and Opinion of the Superior Court of Pennsylvania entered in this case.

OPINIONS BELOW

The Opinion of the Superior Court of Pennsylvania has been reported at 412 Pa.Super Ct. 92, 602 A.2d 1323 (1992) and is set forth in full in Appendix A of this Petition. The Opinion of the Court of Common Pleas of Delaware County is set forth in full in Appendix B of this Petition.

STATEMENT OF JURISDICTION

The judgment of the Pennsylvania Superior Court was entered on January 6, 1992. That Court refused application for reargument by an order dated March 12, 1992. The Pennsylvania Supreme Court refused review of this matter by an Order dated November 13, 1992. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment Four, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment Fourteen, Section One, which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Sergeant John Finnegan of the Narcotics Unit of the Chester Police Department prepared a search warrant and affidavit of probable cause for the search of the residence and vehicle of the respondent, George Clark on June 15, 1990. The affidavit of probable cause was based upon information from a confidential informant who had provided Sergeant Finnegan in the past with information which had led to the arrest of other individuals for violation of the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act. 35 Pa.C.S.A. §780-113 et seq. The police corroborated some of the information provided the confidential informant regarding the drug activities of George Clark, then applied for the search warrant. The warrant was approved by a district justice and executed by the police. Sergeant Finnegan believed the information from the confidential informant to be true. At the suppression hearing, Clark did not

refute the past reliability of the confidential informant, but produced evidence challenging the veracity of the information from the confidential informant in this instance. Based upon this refutation, the trial court suppressed the evidence. The Commonwealth appealed the order of suppression of the Honorable Rita E. Prescott of the Court of Common Pleas of Delaware County to the Superior Court of Pennsylvania which, by an order and opinion dated January 6, 1992, affirmed the order of the Court of Common Pleas. A copy of that order and opinion is attached hereto as Appendix A. The Commonwealth filed a petition for reargument which was denied by the Superior Court by an order dated March 12, 1992. A copy of that Order is attached hereto as Appendix C. The Commonwealth filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania which, by an order dated November 13, 1992, denied that Petition. A copy of that Order is attached

hereto as Appendix D. The Commonwealth now seeks this Court's review of the Superior Court's Opinion and Order.

REASONS FOR GRANTING THE WRIT

The Fourth and Fourteenth Amendments to the United States Constitution do not require that suppression of evidence where no improper or illegal actions have been found on the part of law enforcement officers.

The Pennsylvania Superior Court has decided a question of federal law[1] in conflict with the applicable decisions of this Court by holding that evidence must be suppressed where information from a confidential informant upon whom the police officer could reasonably rely was proven to be incorrect. This extension of the Exclusionary Rule as a sanction, not for the

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[1] The Superior Court Opinion purported to base its decision upon the Pennsylvania Constitution, however that was based on the erroneous conclusion that this case turns upon Pennsylvania's rejection of the "good faith exception" to the Exclusionary Rule. In fact, that exception is inapplicable and the only issue presented is whether the Exclusionary Rule extends to conduct by non-governmental informants. The decision is thus presumed to be based upon federal constitutional grounds. Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).

behavior of law enforcement officials, but for an incorrect statement of fact by a confidential informant, is in direct conflict with the prior decisions of this Court.

In Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), this Court held that in challenging the existence of probable cause supporting a search warrant, the veracity of the affiant may be challenged upon a substantial preliminary showing of falsity. This Court further held that only those deliberate misstatements and those showing a reckless disregard for the truth which are material to the existence of probable cause should require the suppression of evidence.

The Pennsylvania Superior Court, in direct conflict with the holdings of this Court, has extended the Exclusionary Rule[2] to require the suppression of evidence where no misconduct by law enforcement officials is

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[2] Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

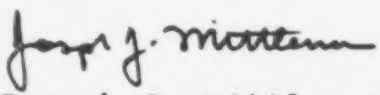
alleged or proven, but only by a non-governmental informant. This unprecedent departure from the Exclusionary Rule has so distorted that Rule that grant of a Writ of Certiorari by this Court is necessary.

The instant matter is an appropriate case for this Court to review since the Pennsylvania Superior Court has ignored the plain holding of Franks v. Delaware and extended the Exclusionary Rule to a new area which is contrary to the purpose of that Rule. In view of the widespread and necessary use of informants by police officers in their creation of search warrants, this is an important matter which is appropriate for review by this Court.

CONCLUSION

For all the foregoing reasons, the Commonwealth of Pennsylvania respectfully requests that a Writ of Certiorari issue to review the decision below.

Respectfully submitted,



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